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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DPH HOLDINGS CORP., et al.,

Reorganized Debtors.

- - - - -x

U.S. Bankruptcy Court

300 Quarropas Street

White Plains, New York

August 25, 2011

10:09 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

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HEARING re Sixty-Ninth Omnibus Hearing

HEARING re Notice of Agenda Proposed Forty-Seventh Claims  
Hearing Agenda

Transcribed by: Zipporah Geralnik

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Okay. Good morning.

4 In re DPH Holdings.

5 MR. BUTLER: Your Honor, good morning. Jack Butler  
6 from Skadden Arps here this morning for DPH Holdings. Sitting  
7 at counsel table is my colleague, Lee Garner, and Will  
8 Cosnowski who is the legal representative from DPH Holdings.

9 Your Honor, this is the sixty-ninth omnibus hearing  
10 and the forty-eighth claims agenda hearing -- claims hearing.  
11 There are four matters on the omnibus agenda. There's one  
12 matter on the claims agenda. If I could briefly just address  
13 those matters that are going forward.

14 THE COURT: That's fine.

15 MR. BUTLER: Taking up first, Your Honor, the claim  
16 hearing agenda, if I may. The forty-seventh claims hearing.  
17 There's one matter listed on that agenda which was a claims  
18 objection regarding the claims of ATS Ohio, Inc. and other  
19 parties and that matter has been adjourned to the September  
20 22nd, 2011 hearing pursuant to a notice of adjournment that's  
21 been filed. So there's nothing else on the claims agenda for  
22 today.

23 THE COURT: Okay.

24 MR. BUTLER: And Your Honor, with respect to the  
25 sixty-ninth omnibus hearing, there are four matters on that

1 agenda. One is being withdrawn, two are being adjourned and  
2 one is going forward as contested. So, as to the matters not  
3 going forward; very briefly, matter number 1 on the agenda  
4 which is the motion of the IUE-CWA at docket number 21492 has  
5 been withdrawn by the IUE-CWA at docket number 21521. It's not  
6 going forward.

7 THE COURT: So that -- that's over at this point?

8 MR. BUTLER: That's over.

9 THE COURT: Okay.

10 MR. BUTLER: The union, after consultant with DPH  
11 Holdings, at least this moment, has withdrawn their motion.

12 THE COURT: Okay.

13 MR. BUTLER: Matter number 2, Your Honor, and matter  
14 number 4 are related. Matter number 2 is the motion by the  
15 reorganized debtor to file a statement regarding the final  
16 extension motion filed at docket number 21509 and matter number  
17 4 on the agenda are the adversary proceedings relating to the  
18 various avoidance actions filed at various docket numbers. And  
19 those -- both of those matters, by agreement between the  
20 parties, has been -- and with the Court, has been adjourned to  
21 the October 24th hearing.

22 THE COURT: Okay.

23 MR. BUTLER: Your Honor, that leaves us with matter  
24 number 3 as the only matter going forward today. It's a  
25 contested matter and it's the motion by Methode Electronics for

1 leave to file its amended counterclaim against the reorganized  
2 debtors and to which the DPH Holdings has filed an objection.

3 THE COURT: Right. And DPH also has an objection to  
4 the claim, right, in the --

5 MR. BUTLER: Yes. We have an objection --

6 THE COURT: -- case.

7 MR. BUTLER: -- to the claim which has been pending  
8 previously but the -- the claims objection but this was -- the  
9 hearing that's actually before the Court today deals with their  
10 motion practice.

11 THE COURT: Okay. Thank you.

12 MR. JACOB: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. JACOB: Shalom Jacob, Locke Lord Bissell & Liddell  
15 for Methode Electronics. Seated alongside me is Anne Marie  
16 Walsh and Zachary Silbersher from Locke Lord and Emil Kleinhaus  
17 from Wachtell Lipton. Before the Court this morning is  
18 Methode's motion for leave to file an amended counterclaim in  
19 Michigan. We've been here before, as Your Honor knows. Mr.  
20 Mayer appeared a couple of times for our client. The legal  
21 submissions are lengthy, we're ready to address any issue that  
22 the Court wants to hear us about and to try to answer any  
23 questions that the Court has.

24 What I did want to do is try to touch briefly on some  
25 of the issues that Skadden has raised, Delphi has raised. I

1 think Delphi has narrowed some of the issues and we appreciate  
2 that and I just wanted to address a couple of issues briefly  
3 and then respond to any questions that the Court would have  
4 and, if appropriate, to any issues raised by Delphi.

5 THE COURT: All right.

6 MR. JACOB: Method tendered and has since then filed  
7 an amended counterclaim with the Court. I'd like to address  
8 first, Delphi's main point which is that we are not in  
9 compliance with the stipulation entered by the Court in June of  
10 2010. Briefly stated, that simply is not so. Delphi claims  
11 that we don't comply with the stipulation because our claims  
12 are still pre-bar date claims.

13 As we explained in our response, we have two causes of  
14 action in the amended complaint. The first is breach of  
15 contract and, under our amended complaint, our claim would be  
16 based on a written termination of -- in August of 2009, well  
17 after the bar date, a written termination of our contract, as  
18 well as written misrepresentations after the bar date that  
19 Delphi did not resource our product. And both of those event  
20 clearly took place after the bar date and we don't see any  
21 issue about that.

22 Our second cause of action is a fraudulent inducement  
23 claim. Basically our claim is that, at the time we negotiated  
24 the 2008 contract, we had no idea -- when I say we I mean my  
25 client had no idea that they had been sued by Delphi with a



1 twenty million dollar preference suit. Had they known about  
2 that, they would never have entered into a contract. That  
3 concealment took place from the fact that the preference suit  
4 was filed under seal. That situation continued for quite a  
5 while, certainly after both of the bar dates. And simply  
6 because Delphi withheld that information, it is impossible that  
7 our claim could have arisen before the bar date. We didn't  
8 know anything about it until way after the bar date.

9 Now, I would point out, we're not asking today and it  
10 is not necessary today for the Court to get to the issue of  
11 whether the under seal orders were properly procured. That's  
12 not our issue. Obviously, if they were not properly  
13 procured -- and that is a position that we're taking in  
14 preference case -- that makes our claim even stronger than it  
15 is. But we're not asking the Court to go there today and we  
16 don't think that's necessary for our fraudulent inducement  
17 claim.

18 The fact that information was withheld from us while  
19 contract negotiations went on and that that concealment went on  
20 for months afterwards and that we had no way and did not, in  
21 fact, know of the lawsuit as we negotiated this contract, to us  
22 says that we have a fraudulent inducement claim that clearly  
23 arises after the bar date. We would note we've cited authority  
24 that says that. I am not aware of authority to the contrary.  
25 Certainly, Skadden -- Delphi and Skadden, in their brief, have

1 not cited any authority for their position that despite our  
2 complete ignorance of the facts, due to the fact that Delphi  
3 withheld this information, somehow our claim arose while we  
4 were completely unaware of the facts.

5 In our view, therefore, we have complied perfectly and  
6 to the letter with the requirement stipulation that our claims  
7 arose after the bar date and they are set forth pretty clearly  
8 and specifically in our amended counterclaim.

9 THE COURT: All right. I have two observations on  
10 this that I'd like you to address.

11 MR. JACOB: Okay.

12 THE COURT: First, the resolution at the June 14th --  
13 I'm sorry -- at the May 2010 hearing that was then incorporated  
14 into the June 14th, 2010 order. Didn't address whether the bar  
15 date was effective or not or whether there would be relief from  
16 the bar date but simply provided that any pre-bar date claims,  
17 i.e. any claims arising before the bar date, would not be  
18 asserted. It's clear from Methode's pleadings that Methode  
19 knew about the preference suit before the May hearing, before  
20 the June 14th order and over the last year and two months.

21 So my first question is why isn't this properly -- or  
22 if at all -- to be brought as a motion under Rule 60, as  
23 opposed to an argument that Methode is complying with the June  
24 14th order because it didn't have notice of this potential  
25 claim that it had?

1           My second point is, recognizing the context of this  
2           motion -- which is to seek to pursue the counterclaim in  
3           Michigan, and recognizing that the whole colloquy that led up  
4           to the agreement set forth on the record or the understanding  
5           set forth on the record in May of 2010, was that that is a  
6           relatively easy motion to determine if, in fact, the bar date  
7           issues are taken out of the case -- why is it that I should  
8           grant the underlying motion if, notwithstanding the colloquy --  
9           the lengthy colloquy -- in May of 2010, the June 14th order and  
10          the further clarification in the August 26th order, the bar  
11          date issue is now -- if I conclude it is still a live issue --  
12          front and center; and that, in addition to that issue, now  
13          there is a further issue as to the bona fides of the debtor  
14          acting pursuant to Court order or not, in respect of the  
15          preferences, all of which pleadings are incorporated now, by  
16          your footnote, into this action?

17                It just seems to me that, assuming for the moment that  
18                I agreed with you that the stipulation isn't binding -- which I  
19                have a very hard time doing -- if I did that, I would clearly  
20                keep the case, because the whole issue here is the bar date and  
21                interpretation of my orders. Not just the bar date order but,  
22                now, the June 14th order and the orders under Rule 4(m). It's  
23                all bankruptcy now. I -- so, if you could address those two  
24                questions.

25                MR. JACOB: Okay. I think there were several points

1 that we could be made. The first one is that the notion that  
2 we were fully apprised, as Delphi claims, on March 19th or  
3 whenever we received a summons, is wrong and impractical and  
4 doesn't make any sense. After two and a half years of people  
5 moving on, lawyers moving on --

6 THE COURT: That may be the case, but none of that is  
7 dealt with in these motion papers and that's why I said why  
8 shouldn't this be a motion under Rule 60 when I can actually  
9 consider that on a proper record?

10 MR. JACOB: We have made a Rule 60 motion in the  
11 preference cases.

12 THE COURT: That's not this.

13 MR. JACOB: I believe --

14 THE COURT: That's the preference cases.

15 MR. JACOB: I believe there is a footnote in our brief  
16 that we incorporated that motion --

17 THE COURT: Do you really want to do that? Do you  
18 really think that there's enough here for me to rule on a Rule  
19 60 motion? You have the burden there. I'm prepared to do  
20 that. I don't think you set forth your case under Rule 60.

21 MR. JACOB: No, but Judge, I don't --

22 THE COURT: I mean, you have two of the best law firms  
23 in the country representing you. And for me to believe that  
24 Mr. Mayer and Ms. Walsh didn't know about a nineteen million  
25 dollar preference claim that went to the heart of this

1 contract, two months -- and then three months, given the June  
2 14th order, is kind of hard to believe and requires something,  
3 I think, more than a footnote incorporating preference  
4 pleadings.

5 MR. JACOB: But Judge, that's not what I'm saying.  
6 I'm not saying we would not know about the preference lawsuit.  
7 I'm saying that after the world changing for two and a half  
8 years, it took us more than two months to understand the  
9 ramifications of that lawsuit and that we should have been  
10 entitled to a reasonable amount of time. I'm also saying  
11 that --

12 THE COURT: I'm sorry; reasonable amount of time to do  
13 what?

14 MR. JACOB: To assess the ramifications of two and a  
15 half years of not knowing of the lawsuit and how it affected  
16 this case.

17 THE COURT: But -- look, there's no affidavit here,  
18 but I accept the fact that a light bulb may have gone off in  
19 someone's head who dealt with this supply contract who said my  
20 God, they're suing us for nineteen million dollars; we would  
21 never have entered into a three-year contract with them if we  
22 knew they were being sued with nineteen million dollars. I've  
23 accepted that fact for purposes of this pleading.

24 What I don't understand is why that light bulb didn't  
25 go off in the heads of that same person and counsel in

1 preparing for the May hearing, at the May hearing or on June  
2 14th. Or before then when the order was submitted. And  
3 there's nothing here to support the contention that it didn't  
4 go off or that it wasn't reasonably known to them at the time,  
5 which is what you would need to show under a Rule 60 motion.

6 MR. JACOB: But Judge, I don't think we need to go to  
7 a Rule 60 motion. I think we were entitled to a reasonable  
8 amount of time after two and a half years to deal with our  
9 clients, to pull records out of storage, to make the  
10 connection. We had a separate law firm. Mr. Mayer had nothing  
11 to do with the preference action.

12 THE COURT: I don't accept that. I'm sorry. I don't  
13 accept that. So I think you have a choice. If you want me to  
14 treat this as a Rule 60 motion today, which I certainly didn't  
15 view it as, you lose. If you don't, you can make the motion  
16 with a proper record.

17 MR. JACOB: Given that choice, Your Honor -- but,  
18 after everything is said and done --

19 THE COURT: Right.

20 MR. JACOB: -- we did comply with the stipulation.

21 THE COURT: And how did you do that?

22 MR. JACOB: Because our claims arise after the bar  
23 date.

24 THE COURT: How -- how could that possibly be when you  
25 assert a claim based in 2008 in the amended complaint?

1 MR. JACOB: Because we had no idea about the lawsuit  
2 in 2008. We had no idea about the lawsuit in 2009.

3 THE COURT: But it doesn't -- that's not what the --  
4 that's not what the transcript says. It says anything pre-bar  
5 date is out.

6 MR. JACOB: It says claims -- with all due respect,  
7 Your Honor, the stipulation --

8 THE COURT: Should we go through it, with all due  
9 respect, sir? You have tested my patience in these papers,  
10 all right? And one reason I would keep this case,  
11 notwithstanding there being a clear order, is that I have  
12 serious doubts, at this point, when you're back here for the  
13 third time making the same types of claims and given the  
14 misstatements of the law in addition to that in your papers,  
15 that you wouldn't go ahead in the Michigan Court and try to do  
16 the same thing all over again.

17 Now, I don't think that is necessarily or should be a  
18 valid reason to keep a matter when the record has been made  
19 clear, i.e. that you don't trust counsel to comply with an  
20 order. But you're getting very close to that point. So let's  
21 go through the transcript and you show me where it wasn't  
22 crystal clear.

23 MR. JACOB: Judge, I'm just looking at the  
24 stipulation.

25 THE COURT: No. The transcript of the hearing is

1 incorporated and so ordered by the Court on page 4. That is  
2 the decretal portion of the order. "The disposition of the  
3 motion and the reorganized debtors' timeliness objection with  
4 respect to the contract claim is as set forth in the transcript  
5 of the hearing which is hereby so ordered by the Court."

6 So let's go to the transcript. I count at least four  
7 instances where this was made crystal clear and your co-counsel  
8 agreed, in fact, thanked me for making it crystal clear. In  
9 addition to that, we had another hearing, where apparently it  
10 had not been crystal clear to him because there was another  
11 motion made, and if it wasn't crystal clear before, it was  
12 etched in stone after the August hearing. So let's go through  
13 it.

14 MR. JACOB: Judge, are we talking about both causes of  
15 action or only the second one?

16 THE COURT: We're talking about pre-bar date versus  
17 post-bar date.

18 MR. JACOB: Because we only talk about the bar date in  
19 the second cause of action.

20 THE COURT: That's what I'm focusing on.

21 MR. JACOB: Okay.

22 THE COURT: I'm focusing on that. We'll turn to the  
23 other one but we're focusing on the bar date. The bar date is  
24 the issue, as was clear from the very start of my addressing  
25 this matter at the May hearing, would determine, in my mind,



1 most likely, whether this case stayed here or went back to  
2 Michigan. Because the bar date is my order, it's a core  
3 bankruptcy issue and it made perfect sense for me to deal with  
4 it. On the other hand, if, as was made clear, as I said at  
5 least four times during this hearing, the bar date is out  
6 because we're not dealing -- with whether something was pre- or  
7 post-bar date, then in -- as I said at the end of the hearing,  
8 it's most likely it would go back to Michigan.

9 I did want to see -- which was a good thing -- what  
10 you all came up with in your amended complaint before I  
11 actually let it go out; but if, in fact, it was clear that you  
12 were dealing with just pre-bar date -- I'm sorry, just post-bar  
13 date matters, I made it clear that it was going to go to  
14 Michigan. That's not where we are. Again. Over a year later.  
15 And I don't understand it. The only basis for it, in my mind,  
16 is if you can satisfy me under Rule 60, and you haven't so far.

17 I mean it starts on page 8.

18 "There's no untimeliness."

19 "Yes," Mr. Mayer says.

20 "Because you're say -- no untimeliness issue because  
21 you're saying that the claim here is all based upon a wrong by  
22 Delphi that occurred after the bar date.

23 "MR. MAYER: That, again, is our view."

24 And then Mr. Meisler comes in on page 9 and says well,  
25 Judge, you know it -- it may -- it -- we think it's all pre-bar

1 date. And I'm not satisfied with that yet because there's a  
2 possibility that there's post-bar date activity that gives  
3 rise -- some additional wrongdoing that gives rise to the basis  
4 for a claim at that point.

5 And then on page 10, Mr. Meisler says "Your Honor, for  
6 clarification, that means that any conduct pre-June 1st is time  
7 barred." Any conduct."

8 "COURT: Right."

9 Then Mr. Mayer says "I'm not quite sure what that  
10 means."

11 And then I say, on page 11 "You can bring in evidence  
12 to support your post-bar date breach claim, but you can't do it  
13 if it's independently the basis of a claim." "Independently  
14 the basis of a claim."

15 And then Mr. Mayer says "Well, that's a little bit  
16 slippery." 11.

17 And I said, "I don't think it is. I think it has to  
18 be clear."

19 And then it says that it's clear that you cannot  
20 assert a claim for anticipatory breach and breach and he said  
21 no, we're not doing that. And then this is the key thing. Mr.  
22 Meisler says, again, "To me it's crystal clear. So for  
23 purposes of facilitating the dialogue between me and Mr. Mayer  
24 in particular, I just want to be -- I want to at least be clear  
25 on my understanding which is as I had understood their papers

1 to say, because of the bad faith that took place pre-June 1st,  
2 the clear and unambiguous language of paragraph 11 of the terms  
3 and conditions, which is the termination for convenience  
4 clause, is not enforceable or is rendered null and void. To be  
5 clear, that argument, the bad faith argument, to me, I actually  
6 thought that was the claim they were asserting that occurred,  
7 if you will, post-June 1.

8 "THE COURT: Delphi's alleged bad faith before the bar  
9 date would not be a basis for this claim.

10 "MR. MEISLER: Terrific. Thank you, Your Honor.

11 "THE COURT: It would not be a separate basis for the  
12 claim. That's, I think, different than saying that you can  
13 look at Delphi's conduct, generally, to see whether there was a  
14 breach post-bar date.

15 "MR. MAYER: I don't disagree with that.

16 "THE COURT: You don't have a bad faith claim based  
17 upon their whatever, you know, breach of duty of good faith and  
18 fair dealing, for example, based on pre-bar date activity.

19 "MR. MAYER: Yes. I think that is right.

20 "Okay.

21 "Thank you, Your Honor," says Mr. Meisler.

22 "MR. MAYER: That's right."

23 That's the third time this has been dealt with. Then  
24 Ms. Walsh stands up and says "Certainly Delphi's" -- on page  
25 14 -- "Certainly Delphi's bad faith during contract

1 negotiations is the basis for our counterclaim.

2 "THE COURT: No, it isn't. It's not. That's just  
3 what we've gone through."

4 "MS. WALSH: I know."

5 "THE COURT: It may be relevant to whether there was a  
6 post-bar date breach, but it's not --

7 "MS. WALSH: Okay.

8 "-- the basis that gives rise to a claim.

9 "MS. WALSH: We are not bringing a claim for Delphi's  
10 bad faith, just so I can clarify that.

11 "Okay."

12 Of course, that's what is in the complaint, as  
13 modified, on the bar date. So again, I say at the bottom "Some  
14 sort of pre-bar date fact, as long as that pre-bar date fact  
15 does not, in and of itself, give rise to a separate claim.

16 "MS. WALSH: Yes.

17 "Okay. i.e., the only claim you're asserting is a  
18 post-bar date breach.

19 "MS. WALSH: Yes.

20 "THE COURT: Okay. All right.

21 "MS. WALSH: Thank you.

22 "MR. MAYER: Good. We appreciate the clarification."

23 And everyone agrees. And then, again, at page 37:

24 "I think, again, as I read their objection to your  
25 motion, a significant part of it was bound up in the notion

1 that they thought you were trying to sidestep the bar date  
2 issue by arguing that this litigation's fine to go ahead in  
3 Michigan and that I would -- I would -- I'm uniquely situated  
4 to interpret my own orders on that. But I think we dealt with  
5 that issue.

6 "MR. MAYER: Yes, your orders are essentially out of  
7 the case, I think.

8 "THE COURT: Yeah.

9 "MR. MAYER: So to speak.

10 "THE COURT: Okay.

11 "That's my understanding.

12 "THE COURT: Well, because they control.

13 "Right.

14 "Right.

15 "In other words, it's not a dispute that we have  
16 to" -- that's Mr. Mayer saying and I say "right" and then he  
17 says -- finishes his thought "-- bring to you on that subject.

18 "Okay."

19 I agree. And then I say "Well, but, again, you can  
20 come back to me. If someone's violating my order and the  
21 stipulation that was set forth out on the record today," --  
22 which we said two sentences before then -- "then it's easy  
23 enough to remedy, I think."

24 Well, Mr. Meisler was right. It wasn't that easy to  
25 remedy because we're back here again, over a year later. It

1 was agreed. Everything before the bar date is out. And it's  
2 possible to me, it's conceivable to me, that in May of 2010 and  
3 before I entered the order in July of 2010, and certainly over  
4 the last year and a month, it only came to the attention of the  
5 people handling this that they had this other issue. But I  
6 think it takes more than it just being conceivable to me to  
7 grant you Rule 60 relief.

8 And that's particularly the case where we clarified  
9 all this again in August of 2010. Which I guess it still  
10 wasn't -- the light bulb still hadn't gone off in Methode's  
11 mind about the preference lawsuit? When was the answer due on  
12 the preference lawsuit?

13 MR. JACOB: Sometime in May or June.

14 THE COURT: Okay.

15 MR. JACOB: But we did not understand there was an  
16 issue. We answered and then we joined the second wave and then  
17 become part of the first wave.

18 THE COURT: No. I'm talking about tying the lawsuit  
19 to the contract. And saying that we have a bad faith claim  
20 that arose in 2008 when we negotiated the contract or before  
21 then. I -- it just -- you know --

22 MR. JACOB: I don't think we filed an answer.

23 THE COURT: Didn't think about it even though it was  
24 absolutely essential to the negotiation of the contract? As I  
25 say, it's conceivable. It's hard to believe but it's

1 conceivable. But I thought that Mr. Mayer was pushing it in  
2 August to make this point but I just don't -- because I thought  
3 I was pretty clear in May but it -- you know, there was no  
4 doubt in August that if the pre-bar date conduct is the basis  
5 for the claim, as opposed to adding a context to a post-bar  
6 date breach, it's out. I don't -- it's just -- you know, it's  
7 out.

8 And then to make these other arguments that the bar  
9 date shouldn't even apply -- a, I think it's irrelevant because  
10 there's an order that controls; it's a final order. And b, I  
11 dealt with most of them already on the patent claim. So, you  
12 know, again, are you going to be making those same arguments to  
13 the Court in Michigan? Are you going to be saying that we're  
14 going to litigate the whole issue of the 4(m) in Michigan?

15 MR. JACOB: No, Judge. We're not going to do that.

16 THE COURT: Well, but -- but it's incorporated into  
17 the pleadings.

18 MR. JACOB: But Judge, I said that we would not -- we  
19 were not trying to raise that issue today.

20 THE COURT: I understand but if you say that they  
21 wrongfully withheld it from you, their answer's going to be  
22 well, we had a court order.

23 MR. JACOB: We -- I did not even use that word because  
24 we don't even need to get there. The fact that they withheld,  
25 even if they had a court order, means we did not have the

1 information. And all I'm saying, Judge, is that that means we  
2 didn't know anything when we did the contract and, as a matter  
3 of law, we cited some authority that says our claims arose when  
4 we learned of it.

5 THE COURT: Well, all right. And on that, I actually  
6 did discuss that issue with Mr. Mayer in August and cited the  
7 authority that I assume the other side would cite, all of which  
8 is a wonderful bankruptcy law issue which has been dealt with  
9 at the Circuit court level, which is how much do you need to  
10 know about a claim before publication notice is enough. I cited  
11 Chemtron which has been followed by the courts in this  
12 district.

13 So those factual issues -- all that go -- all of which  
14 go to the bar date -- and -- not the underlying merits but the  
15 bar date, should be here. I mean that -- this is -- it's a bar  
16 date. It bars future litigation. So if we're going to have  
17 fact finding as to what Methode knew or didn't know about the  
18 preference litigation, it should be here. That's not a  
19 contract suit. It's related to the bar date. But I don't see  
20 how you even get there given the -- the order -- the July  
21 order. It's -- you know? I really think you're on a Rule 60  
22 motion at this point.

23 MR. JACOB: Well, we will make a Rule 60 motion --

24 THE COURT: Okay.

25 MR. JACOB: -- but our first cause of action had



1 nothing to do with the bar date.

2 THE COURT: Well, let's focus on that. If we look at  
3 the amended counterclaim and just focus on the Count 1,  
4 paragraph 28 says "In bad faith, Delphi sent Methode a letter  
5 setting forth its alleged reasons for Delphi's termination,  
6 none of which had any legitimacy." It's under the operative  
7 terms of the contract. How do you get to -- again, this is  
8 the -- this was the issue that I posed with Mr. Mayer in  
9 August.

10 Basically, you're saying that the contract was  
11 illegitimately terminated.

12 MR. JACOB: Correct.

13 THE COURT: What is -- what is the basis -- what is  
14 the conduct for illegitimately terminating it?

15 MR. JACOB: I'm going to ask Ms. Walsh to address that  
16 issue.

17 THE COURT: Okay. I mean, the complaint doesn't say  
18 what it is and the motion doesn't say what it is. So, again,  
19 if it's pre -- if -- look, Delphi says that they could  
20 terminate at will. Originally, I think the complaint said that  
21 it was a bad faith termination or an unlawful termination. Now  
22 it says it's an "illegitimate" termination. If the basis for  
23 any of those things is pre-bar date conduct, then I -- it's no  
24 different than where we were in August.

25 MR. JACOB: Your Honor --

1 MS. WALSH: Sir, can I address --

2 MR. JACOB: -- I don't think that's true. I'm going  
3 to have Ms. Walsh address it but our view is that the term in  
4 the contract superseded the --

5 THE COURT: That's fine. Paragraph 26 -- I don't have  
6 any problem with that. I have no problem with paragraph 26  
7 which says that the three-year term negotiated by the parties  
8 overrides any general boilerplate terms relating to duration of  
9 the contract. That's a straight contract issue. You can argue  
10 to a court, including the Michigan court, that the contract  
11 interpretation law is such that the three-year term governs and  
12 that something else has to happen, notwithstanding the  
13 termination at will language.

14 But that's not -- I mean, again, paragraph 28 says  
15 Delphi lacked good faith, so that's a separate basis. And  
16 again, we -- you know, we dealt with this with the first motion  
17 where I said you're going to have to make it clear to me that  
18 the basis for that lack of good faith, the facts giving rise to  
19 the lack of good faith is a post-bar date thing. And I --  
20 paragraph 28, I don't think, does that. Because again, it says  
21 none of these things had any legitimacy. It relates right back  
22 to misconduct, I guess, right?

23 MR. JACOB: Yes.

24 THE COURT: "Illegitimate" conduct?

25 MR. JACOB: Yes but this termination occurred well

1 after the bar date.

2 THE COURT: No, we've been through that. We have been  
3 through that. And I'm surprised that you're making that  
4 argument again.

5 MR. JACOB: But I'm going to ask Ms. Walsh to address  
6 the --

7 THE COURT: Okay.

8 MR. JACOB: -- specifics --

9 THE COURT: All right.

10 MR. JACOB: -- of that issue.

11 THE COURT: Okay.

12 MS. WALSH: Would you like me to go to the podium?

13 THE COURT: Wherever you're -- that's fine. Where  
14 you're standing is fine.

15 MS. WALSH: Thank you, Your Honor. Anne Walsh on  
16 behalf of Methode Electronics. My understanding from the  
17 stipulation that was entered as a result of the May hearing was  
18 that we were instructed to allege post-bar date conduct and I  
19 think we've done that in numerous ways. The new counterclaim,  
20 the amended counterclaim, is extremely different from the  
21 original counterclaim tendered to the Court in the summer of  
22 2010. We tendered it to Skadden, I think, in May of this year.

23 First of all, with respect to the -- first of all, the  
24 sentinel, critical fact in this case is the fact that the  
25 contract was terminated post-bar date. That gives rise to the

1 cause of action, plain and simple, under contract law. The  
2 termination is the breach of contract. That is our cause of  
3 action. That was on August 26th of '09.

4 THE COURT: All right. I have already ruled on that.

5 MS. WALSH: Your Honor --

6 THE COURT: I disagree with that.

7 MS. WALSH: -- I think you did rule on it.

8 THE COURT: It's not a breach. Termination is not a  
9 breach unless it's wrongful. If the basis for the wrongful  
10 conduct is pre-bar date, that's what governs. Simple  
11 termination isn't wrongful. There has to be a basis for it  
12 being wrongful as a breach.

13 MS. WALSH: Yes --

14 THE COURT: And I thought that was clear in May. I  
15 certainly made it clear in August. So let's go to the next  
16 point.

17 MS. WALSH: Your Honor, I think you did make it clear  
18 and the portion from the transcript which is on my page 28, you  
19 said -- you were referring to that that conduct may be relevant  
20 to whether there's a breach but it doesn't give rise to the  
21 cause of action. In August of 2009 is when we received the  
22 letter of termination. There were three bases cited for the  
23 alleged termination of the contract which is the reference in  
24 that paragraph in the complaint.

25 One is they cited the termination for convenience

1 clause which we've discussed here. The second was they claimed  
2 that Methode had quality problems with respect to the  
3 production of parts. The third basis for termination was that  
4 there was an alleged clause in the contract, which is not  
5 there, that we had to meet all competitors' prices and we did  
6 not. We received that letter in August of 2009. We couldn't  
7 possibly have been charged with knowledge of that termination  
8 prior to that date. That date is post-bar date.

9 When we were here before Your Honor, you made it very  
10 clear to us that we had to allege post-bar date conduct. We  
11 have done that.

12 THE COURT: None of that is in this complaint.

13 MS. WALSH: Your Honor, I think it is.

14 THE COURT: Well, where?

15 MS. WALSH: You instructed us --

16 THE COURT: Where?

17 MS. WALSH: -- that they have a right --

18 THE COURT: I instructed you to be specific because of  
19 this concern.

20 MS. WALSH: Right.

21 THE COURT: And instead said it's actually gotten less  
22 specific.

23 MS. WALSH: Your Honor, you instructed us that what  
24 about if they have a right to terminate the contract? First of  
25 all, the right to terminate the contract is a defense to the

1 breach of contract case. It is not an element of our cause of  
2 action. And therefore, it's part of their defense. And we  
3 should be able to put on evidence regarding why that isn't so.  
4 But, more importantly, Michigan has case law that provides, as  
5 we've alleged in our paragraph, that case came down in May  
6 of -- sometime in the summer of 2010, I believe, Summit  
7 Polymers, that a specific term of a contract, i.e. a three year  
8 supply contract --

9 THE COURT: I don't have a problem with that  
10 provision.

11 MS. WALSH: Okay.

12 THE COURT: I have a problem --

13 MS. WALSH: That's what we've alleged.

14 THE COURT: -- with the general allegation in  
15 paragraph 28. I -- and -- if, in fact, it had been made  
16 specifically or described specifically or stipulated to that  
17 what you are saying here is that their specific reasons for  
18 termination were pretextual, I guess I would understand the  
19 argument. But all it says is "none of which had any  
20 legitimacy." I don't know what that means. And that's like  
21 saying they're wrongful. But --

22 MS. WALSH: Your Honor, I guess what I'm getting  
23 confused about and, frankly, I don't know that I could even  
24 explain it to my client which is this -- and I know we keep  
25 coming back to this but the termination was post-bar date. And

1 I know we've talked about this extensively and I really do  
2 appreciate the Court's insight but the termination was post-bar  
3 date -- I'm sorry -- August of 2009. It's like charging us  
4 with knowledge of a fact that hasn't happened yet. And we,  
5 therefore, have to file a claim. While meanwhile, Delphi sued  
6 us in Michigan, went on with discovery for fourteen months --

7 THE COURT: Look --

8 MS. WALSH: -- cost us million of dollars --

9 THE COURT: -- your client may not understand it, all  
10 right? But it is clear from the arguments. And certainly your  
11 co-counsel understood it and I thought you understood it when  
12 you agreed in May.

13 MS. WALSH: I did -- I did understand it, Your Honor  
14 but --

15 THE COURT: And I just -- look -- this is -- all  
16 right. This is bankruptcy 101, all right?

17 MS. WALSH: Right.

18 THE COURT: You filed a claim for anticipatory breach  
19 in November.

20 MS. WALSH: Um-hum.

21 THE COURT: You knew they were doing something bad  
22 enough to file a claim in November, all right?

23 MS. WALSH: January, but yes.

24 THE COURT: Okay.

25 MS. WALSH: But Your Honor --

1 THE COURT: No, no. Let me finish.

2 MS. WALSH: Yes, Your Honor.

3 THE COURT: Because you've contested that what's going  
4 on here is illogical. All right? And I'm going to explain to  
5 you for the last time that it is not --

6 MS. WALSH: Yes, Your Honor.

7 THE COURT: -- and that it, in fact, is supported by  
8 an agreement of you and your client that's memorialized in an  
9 order that was never appealed from.

10 MS. WALSH: Yes, Your Honor.

11 THE COURT: A termination is not a breach. Something  
12 wrongful has to happen to make it a breach. If that wrongful  
13 thing happened before the bar date, unless you have some excuse  
14 from the bar date, it's out. It's not a claim. It is barred.  
15 Claims, including contingent and unliquidated claims, are  
16 covered by the bar date. Even the Third Circuit has reversed  
17 the one contrary rule that existed, in Frenville, and that was  
18 never the rule in the Second Circuit.

19 So, if the basis for the wrongful conduct occurred  
20 before the bar date, when there was not a claim filed, it's  
21 out.

22 MS. WALSH: Okay.

23 THE COURT: That's -- that's how it works.

24 MS. WALSH: Okay.

25 THE COURT: And in August, Mr. Mayer understood it.



1 And frankly, he should have understood it from May.

2 MS. WALSH: Okay.

3 THE COURT: Because we went over it four times to make  
4 it clear. So -- as I said, I think the complaint here needs to  
5 be more specific. Not because of Rule 8 reasons but because of  
6 bar date reasons. My concern about that -- I think the  
7 complaint -- and because of compliance with the July order and  
8 the May stipulation, I think the complaint here needs to be  
9 more specific as to what actually rendered the termination  
10 unlawful.

11 And it may be that what you are relying here for  
12 paragraph 28 is -- falls into that category but, frankly, it  
13 just seems to me that you've substituted the word "legitimacy"  
14 for "lawfulness." It's the same concept. If something is  
15 illegitimate and it occurred pre-bar date, it's out.

16 MS. WALSH: Okay. Your Honor, could I --

17 THE COURT: But if -- if there's something -- and  
18 again, I told you all it needed to be specific here so I could  
19 make sure you weren't going around the prior orders and --

20 MS. WALSH: Yes.

21 THE COURT: So that's my problem with 28. 29 -- is  
22 there an issue of the debtor's with 29 here about saying  
23 that --

24 MR. BUTLER: Yes, Your Honor. Because it deals  
25 with -- I mean, the problem with Count 1 -- virtually every

1 paragraph of Count 1 deals with pre-bar date conduct and for  
2 this claim preclusion position that DPH Holdings is asserting  
3 today, Your Honor, the claim preclusion, as we sit in this  
4 courtroom today, is based on the orders of the Court in the  
5 stipulation.

6 THE COURT: No, I understand that.

7 MR. BUTLER: Not the bar date.

8 THE COURT: But I 'm just looking -- I'm trying to  
9 look very specifically at paragraph --

10 MR. BUTLER: Well, paragraph 29 deals with discovery  
11 requests that were delivered to them pre-bar date.

12 THE COURT: Okay. Well, that was my question.

13 MS. WALSH: No, Your Honor. They are not pre-bar  
14 date.

15 MR. BUTLER: Well, I --

16 MS. WALSH: Sorry.

17 THE COURT: Well, when was the --

18 MR. BUTLER: Delphi is aware that the bar --

19 MS. WALSH: That's what I was going to point out  
20 about --

21 THE COURT: When was the discovery?

22 MS. WALSH: July of '09. They wrote a --

23 THE COURT: Was there any --

24 MS. WALSH: -- in their --

25 THE COURT: Was there any discovery before then?

1 MS. WALSH: They -- they -- they, in July of '09,  
2 finally -- sixty days late, answered our request for admission.

3 MR. BUTLER: I'm sorry. I'm only trying to read what  
4 the complaint -- the count says.

5 THE COURT: Right.

6 MR. BUTLER: The count says, the last sentence,  
7 "Despite the fact that Delphi was well aware that the bar date  
8 for administrative claims in the bankruptcy was two days after  
9 Delphi served its vague discovery responses." So according to  
10 what --

11 MS. WALSH: The discovery responses were in the summer  
12 of '09. That is post-bar date. On July 13th, 2009, Delphi  
13 answered requests for admissions in which they denied they were  
14 intending to resource us. So -- and they denied it in other  
15 contexts as well in the patent suit. So we may have had an  
16 anticipatory breach complaint on file since January of '09 but  
17 Delphi told us that they weren't going to breach.

18 THE COURT: But can I --

19 MS. WALSH: So why aren't we entitled to rely on that?

20 THE COURT: But I guess --

21 MR. BUTLER: Your Honor, I just want to be --

22 MS. WALSH: They're officers of the court.

23 THE COURT: Wait, wait.

24 MR. BUTLER: I want the record to -- I want the record  
25 to be clear about something. To refresh Ms. Walsh's

1 recollection, there were responses served and things served on  
2 Methode in May of 2009. And I'm reading the words of their  
3 amended complaint.

4 THE COURT: Right.

5 MR. BUTLER: The words of the amended complaint says  
6 "Delphi's written responses were, for the most part,  
7 unresponsive and replete with objections --" and I'm not going  
8 to the merits; I'm just reading the words.

9 THE COURT: Right.

10 MR. BUTLER: "-- despite the fact that Delphi was well  
11 aware that the bar date for administrative claims in this  
12 bankruptcy case was two days after Delphi served its vague  
13 discovery responses."

14 So the allegation in this complaint, that's in  
15 paragraph 29, says, on its face, that the conduct occurred  
16 before the bar date.

17 MS. WALSH: Your Honor, those --

18 MR. BUTLER: I'm only reading the words; I'm not  
19 trying to go --

20 MS. WALSH: No.

21 MR. BUTLER: -- any farther than the words that they  
22 have put in the complaint because I can go through each of  
23 these paragraphs, Your Honor, and, in fact -- but you asked me  
24 about paragraph 29 --

25 THE COURT: Right.

1 MR. BUTLER: -- when I had the opportunity --

2 THE COURT: I'm going to go through the --

3 MR. BUTLER: -- I want to address to the others.

4 THE COURT: No, I want to go through the other ones

5 because we --

6 MR. BUTLER: But paragraph 29, on its face -- now, she

7 may mean something else --

8 MS. WALSH: No, I don't actually but I want him to

9 read the next paragraph.

10 MR. BUTLER: I want to read --

11 THE COURT: Well, but on the --

12 MS. WALSH: They didn't answer the discovery, Your

13 Honor, in that time period. They didn't say whether they were

14 or not.

15 THE COURT: But, you know, I guess --

16 MS. WALSH: It's in July --

17 THE COURT: I guess the issue I have on this is I

18 don't -- there's no date here. There's no date here except for

19 the date at the end of that -- that Mr. Butler's referring to.

20 I don't know whether this is pre --

21 MS. WALSH: Your Honor, in the next paragraph.

22 THE COURT: -- or post --

23 MS. WALSH: And they answered --

24 THE COURT: Okay. Let -- but -- all right. I'm doing

25 them paragraph by -- so I have a problem with paragraph 29. I

1 really can't tell whether it's pre- or post-bar date. I really  
2 don't know. I also am really not sure how this is bad faith in  
3 termination of the contract. How is it bad faith? Is it  
4 that --

5 MS. WALSH: It's not bad -- it's -- it's -- in the  
6 July of 2009, in an answer to a request to admit --

7 THE COURT: Right.

8 MS. WALSH: -- that was very direct and very point  
9 blank --

10 THE COURT: Right.

11 MS. WALSH: -- they said that they denied intending to  
12 resource us or insource us. So in the summer of '09, two  
13 months bef -- a month and a half before they, in fact,  
14 terminated us, they were telling us they weren't going to.

15 THE COURT: Okay.

16 MS. WALSH: That's significant for two reasons.

17 THE COURT: No, no, I -- okay.

18 MR. BUTLER: Your Honor, I --

19 THE COURT: But that -- I'm really focusing on the  
20 second sentence. I understand the first sentence. You're  
21 saying that Delphi told Methode that it was not re-sourcing,  
22 right?

23 MS. WALSH: Yes.

24 THE COURT: That's what you're saying in the first  
25 sentence? Okay. There's no date there on that one.

1 MS. WALSH: Are you on paragraph 29 --

2 THE COURT: Yes.

3 MS. WALSH: -- or 30?

4 THE COURT: 29. There's no date on paragraph 29.

5 That's my problem with 29. With the first sentence of 29. The  
6 second sentence of 29, I don't understand how that is relevant  
7 other than just arguing that they haven't complied with  
8 discovery and raising issues about the bar date. I don't  
9 understand what that sentence does anyway as far as the --  
10 other than trying to bring in bar date issues.

11 Look, this may seem odd to you because, normally,  
12 someone wouldn't do this with a complaint. There's a -- you  
13 know, notwithstanding Twombly and Iqbal, there's a lot of room  
14 people can have in a complaint. But again, this is in a very  
15 specific context where --

16 MS. WALSH: Right.

17 THE COURT: -- I want to make sure that, if I'm  
18 letting this go out back, to Michigan, it's just dealing with  
19 post-bar date issues.

20 MS. WALSH: I understand.

21 THE COURT: And I just --

22 MS. WALSH: And I think --

23 THE COURT: -- don't have any confidence in that with  
24 regard to anything in paragraph 29.

25 MS. WALSH: But I think you could be comfortable with

1 it, Your Honor, because we've alleged that they don't have the  
2 right to terminate the contract because of the paragraph  
3 relating to the specific override --

4 THE COURT: If you limit it to 26, that's fine. I  
5 don't have any problem with limiting it to 26.

6 MS. WALSH: Okay. And so --

7 THE COURT: I told you that. But this is a whole  
8 other set of things, I think. Anyway --

9 MS. WALSH: The paragraphs relating to the discovery,  
10 Your Honor, was really addressing it to you. Those paragraphs  
11 were really addressing it to you.

12 THE COURT: Well --

13 MS. WALSH: Would I ordinarily put that in a  
14 complaint? Maybe not. But you had asked us to state post-bar  
15 date facts.

16 THE COURT: But only as they were -- only as they  
17 relate to the claim. I don't see this as a --

18 MS. WALSH: Because in the summer of 2009, they're  
19 telling us they're not going to breach.

20 THE COURT: I'm not --

21 MS. WALSH: So we relied on that.

22 THE COURT: Well, it doesn't say that. It doesn't say  
23 in the summer of 2009 -- it doesn't say post-bar date they told  
24 us we weren't going to breach. It just doesn't say that.

25 MS. WALSH: The requests to admit were served on July



1 13th --

2 THE COURT: But it doesn't say that. Paragraph 29  
3 does not say that. And I asked Mr. Butler has there been  
4 discovery in the case before the bar date and he says yes,  
5 there has been. So I -- I'm just not comfortable with this  
6 paragraph here.

7 MR. BUTLER: And I'm only reading the words that are  
8 pled.

9 THE COURT: Right.

10 MR. BUTLER: Because I'm not litigating the underlying  
11 case.

12 THE COURT: All right. So, can we go to page 30? I  
13 mean paragraph 30, excuse me. So on July 13, Delphi denied  
14 that it intended to insource or re-source Methode. July 13 is  
15 after the date, right?

16 MS. WALSH: Yes.

17 MR. BUTLER: Yes.

18 THE COURT: So is there an issue with -- I don't  
19 see --

20 MR. BUTLER: Yes. Because read what it says at the  
21 beginning, "at the time of the contract formation." They're  
22 taking --

23 THE COURT: I'm sorry --

24 MR. BUTLER: -- a discovery document --

25 THE COURT: Wait, wait. Let me --

1 MR. BUTLER: -- and they're relating it back to 2008.

2 THE COURT: Oh, yeah.

3 MR. BUTLER: And that's what they keep doing  
4 throughout this --

5 THE COURT: Right.

6 MR. BUTLER: -- Your Honor.

7 THE COURT: No, that's true. That's true. You're not  
8 asserting this for the proposition that Delphi told you, on  
9 July 13th, that we're not re-sourcing. You're basically saying  
10 that they admitted they -- at the time of contract formation,  
11 they intended -- I'm sorry, that they denied they intended.  
12 But it's irrelevant. You're right. I was just focusing on the  
13 date but it goes -- but the purpose of the answer was to say  
14 that we denied to do it at the time.

15 MR. BUTLER: Right. And Your Honor, paragraph 29  
16 actually refers to -- just for context, in their own pleadings,  
17 in the motion they filed, they filed the May -- this May 29th  
18 letter, which is the letter that they referred to in their  
19 complaint everywhere else --

20 THE COURT: right.

21 MR. BUTLER: -- but it's a May 29th, 2009 letter --

22 THE COURT: Right.

23 MR. BUTLER: -- served before the bar date.

24 THE COURT: Well, that's paragraph 31.

25 MR. BUTLER: Right.

1 THE COURT: I understand that. That's a different --

2 MR. BUTLER: Well, it's also, I think, related to 29  
3 but as I --

4 THE COURT: Yeah.

5 MR. BUTLER: -- and my point in 29 was I was --

6 THE COURT: Well, I don't know. I don't know whether  
7 29 is -- I don't know what 29 is referring to because it  
8 doesn't have any date in it.

9 MR. BUTLER: Well I was -- it does give you a date  
10 context in the second sentence, Your Honor.

11 THE COURT: I guess. But the first --

12 MR. BUTLER: And that's why --

13 THE COURT: But the first sentence --

14 MR. BUTLER: Right.

15 THE COURT: -- doesn't have any date.

16 MR. BUTLER: And that's why I was -- and the only date  
17 context in paragraph 29 refers to actions that occurred,  
18 according to the complaint, two days before the bar date.

19 THE COURT: Look, when I -- I guess I was assuming,  
20 notwithstanding Mr. Meisler telling me I shouldn't because  
21 there was no way this could be the case, I thought that perhaps  
22 you all had something that -- where Delphi actually said, post-  
23 bar date, we intend to perform or something like that. But  
24 this doesn't -- this doesn't really -- it all -- except for  
25 paragraph 26 which is just a flat out, you know, contract

1 interpretation issue --

2 MR. BUTLER: Can I address paragraph --

3 MS. WALSH: Which is supported by Michigan case law.

4 THE COURT: Well, that's -- I -- that's --

5 MR. BUTLER: Your Honor, can I address paragraph 26,  
6 briefly?

7 THE COURT: All right.

8 MR. BUTLER: There actually was an exchange between  
9 Mr. Mayer and the Court on that, as well.

10 THE COURT: Okay.

11 MR. BUTLER: At the July 2010 hearing at page -- I  
12 have 77 and 78. Is that line numbers or pages? I'm sorry.

13 THE COURT: Let me see.

14 MR. BUTLER: Pages 77 and 78 of our -- and I quote it  
15 in our -- on page 13 of our response. But it's where the Court  
16 says, you know, "I don't think your complaint parses through  
17 this sufficiently. It covers the gamut here. I mean,  
18 "Paragraph 2 is the key thing. It's due to Delphi's unlawful  
19 contract termination. It was unlawful, right? It was unlawful  
20 for a reason. "

21 Mr. Mayer says "Yes."

22 The Court says "As per the contract, they had a right  
23 to terminate. So something else rendered it unlawful, right?"

24 Mr. Mayer concedes the point. "Yes." Conceding the  
25 point we had a right to terminate.

1 And then the Court says "So that if --

2 THE COURT: Well --

3 MR. BUTLER: -- "something else happened before the  
4 bar date --"

5 MS. WALSH: There was --

6 THE COURT: I don't know.

7 MS. WALSH: -- mistakes in the transcript.

8 THE COURT: You know, I -- is --

9 MR. BUTLER: I mean --

10 THE COURT: I don't know.

11 MR. BUTLER: I mean, because remember --

12 THE COURT: I don't know about that.

13 MR. BUTLER: -- this --

14 THE COURT: I --

15 MR. BUTLER: -- this is a new -- just to state, Your  
16 Honor, this theory --

17 THE COURT: I know it's a new theory.

18 MR. BUTLER: -- is a new theory --

19 THE COURT: I understand.

20 MR. BUTLER: -- right? That was -- came out of a  
21 colloquy before the Court --

22 THE COURT: But again, this is --

23 MR. BUTLER: -- at a prior hearing.

24 THE COURT: -- this is not -- I want to put this is a  
25 context. This litigation hasn't been removed to me. I'm not

1 dealing with a request to amend the complaint under Rule 15.  
2 I'm dealing with Methode's compliance with its stipulation and  
3 my July order because I concluded that if, in fact, the bar  
4 date issues were taken out of this case, then it could go back  
5 to Michigan. Not back in the sense of it would be remanded.  
6 That I would lift the injunction. Because that's why this  
7 motion is here, to get relief from that plan injunction.

8 So, I wanted to see the amended complaint to see  
9 whether, in fact, it complied with the stipulation and the  
10 order. And whether, in fact, this legal contention that's in  
11 paragraph 26 is futile or not or time barred or whatever there  
12 might be as an argument that you'd normally make under Rule 15  
13 in response to a Rule 15 motion, I think is not really relevant  
14 here. Because it isn't a Rule 15 motion. It's just as to  
15 whether the -- Methode has complied with my order and its  
16 stipulation.

17 And that's why I don't think I need to get into  
18 argument about whether this is futile or not. It does appear  
19 to me not to be in violation of my order. Because it's -- it's  
20 just on the face of the contract. And if, in fact, the  
21 contract was breached by the termination because,  
22 notwithstanding the termination at will language, the three  
23 year term trumps that, then that's a post-bar date breach. But  
24 it's not -- I -- that -- in contrast to these other provisions  
25 which, to my mind, premise the claim not upon something that

1       arose post-bar date but, rather, that arose pre-bar date, i.e.  
2       wrongful conduct that would vitiate a valid termination without  
3       cause provision. I mean if something wrongful that would  
4       somehow estop or prevent Delphi from doing that.

5               And I don't see how Delphi's allegedly being  
6       unresponsive to discovery does that, unless the  
7       unresponsiveness were post-bar date statements that, you know,  
8       "we intend to honor the agreement." But clearly a post-bar  
9       date statement that says merely that at the time we entered  
10      into the agreement we intended to honor it, that's neither here  
11      nor there. And I just -- you know, 29 just doesn't -- it  
12      raises the decided risk in my mind that we're going to get back  
13      into these same types of issues that I dealt with in August.

14             The May 29th letter is a pre-bar date letter. As far  
15      as 28 is concerned, it just said it was "illegitimate." I  
16      don't know what -- I mean, and that's, to my mind, the same  
17      thing as when I had the colloquy with Mr. Mayer in August where  
18      I said well, but why was it illegitimate and when did those  
19      illegitimate things happen? If -- if it was illegitimate  
20      because they actually happened or didn't happen, depending on  
21      what the basis for illegitimacy was, pre-bar date, then  
22      that's -- that's a problem. That doesn't -- that doesn't cut  
23      it.

24             MS. WALSH: Your Honor, but what if, of the three  
25      bases that they cite in their termination letter -- and there

1 were three including the fact that we allegedly had to be  
2 priced competitive with competitors, if none of those three  
3 bases -- let's for say example, two of those three bases  
4 weren't legitimate -- we weren't put on notice of them until  
5 after the bar date.

6 THE COURT: I had -- you know, I had asked you all to  
7 go through these things --

8 MS. WALSH: Yes, Your Honor.

9 THE COURT: -- twice out in court, to specify what it  
10 was that you were relying upon. Has this -- was this discussed  
11 with anyone, what you're referring to in paragraph 28?

12 MS. WALSH: You mean discussed with --

13 THE COURT: Anyone at Skadden? About what they -- you  
14 know --

15 MS. WALSH: They have the termination letter. It's  
16 been an exhibit --

17 THE COURT: No, but what 28 was supposed to cover.

18 MS. WALSH: We tendered the counterclaim -- the  
19 amended counterclaim to Skadden in May.

20 THE COURT: But --

21 MR. BUTLER: Judge, can I address that for a moment?

22 THE COURT: But -- no, but -- okay. Fine. Go ahead,  
23 Mr. Butler.

24 MR. BUTLER: This is the third hearing. We've been at  
25 this fifteen months now. This is the third hearing we've had



1 on this issue. The third opportunity that Methode's had to  
2 rewrite their complaint. And just to make the point, when Ms.  
3 Walsh said we were tendered something in May, what happened was  
4 that after the rulings last July and August, for the next ten  
5 months, Methode did nothing. And it wasn't until -- Your  
6 Honor made a note of this earlier in the hearing -- it wasn't  
7 until we renoticed our objection to Methode's administrative  
8 claim on May 25th and set a notice of sufficiency hearing for  
9 that on the claims track, two days later, Methode transmitted  
10 to us the counterclaim.

11 So it was in direct response to our actually filing  
12 the notice of sufficiency hearing for the claim to be resolved  
13 and then four days -- or six weeks later, five weeks later,  
14 they filed this motion. Now, Your Honor, this motion has  
15 attached to it there two counts and we're focused now on Count  
16 1. I just want Your Honor to look at Count 1 as it's pled.  
17 And paragraph 24 of Count 1 says Methode realleges each of the  
18 preceding paragraphs as set forth fully herein.

19 If you read the beginning of the complaint, the first  
20 twenty-three paragraphs, most of it deals with pre-bar date  
21 conduct.

22 THE COURT: All right. But again, I said that they  
23 could -- you're right. And it was incumbent upon them to make  
24 the distinction in the claim itself -- in the claim number --  
25 Count number 1 itself, what was actually wrongful as opposed to

1 just laying the groundwork --

2 MR. BUTLER: Right.

3 THE COURT: -- so that people could put this in  
4 context.

5 MR. BUTLER: And so the question is, is this strike  
6 three or do they get a strike four? I mean at what point in  
7 time -- how many months, how many hearings, how many amended  
8 complaints, how many additional opportunities --

9 THE COURT: Right.

10 MR. BUTLER: -- does Methode -- because I just want to  
11 point out to Your Honor from Delphi's perspective, DPH's  
12 perspective, there is very significant prejudice here. They're  
13 trying to assert, according to them, a forty-odd million dollar  
14 claim. Right? That's their goal here. As opposed to a  
15 700,000 dollar --

16 THE COURT: Well --

17 MR. BUTLER: -- termination fee payment --

18 THE COURT: Right.

19 MR. BUTLER: -- under the -- under the contract.

20 THE COURT: Well, the prejudice is whether we should  
21 just get one with deciding that claim or not or whether we  
22 should wait another several months to see whether I'll lift the  
23 injunction and let the Michigan court decide that claim. And  
24 my inclination, since we're still going around the block on  
25 this, is just to move on to the claim deci -- deciding the

1 claim. Deciding the amount of the claim and whether it's time  
2 barred.

3 MR. BUTLER: And we're prepared for that.

4 THE COURT: But I --

5 MR. BUTLER: We're prepared to do that, Your Honor.

6 THE COURT: You know, I'm happy to -- I don't know.  
7 If you -- look, if it were limited to paragraph 26, this issue  
8 of Michigan law, I would be happy to let it go to Michigan.  
9 You know? The Michigan court can construe Michigan law as to  
10 whether the contract -- what provision of the contract trumps.  
11 But I -- I'm just very wary at this point, given what I -- what  
12 I don't understand in these repeated arguments, I'm very wary  
13 that there will be more in front of the Michigan court than  
14 that issue and that the bar date issue and the preference  
15 issue -- all of it will creep in to the Michigan litigation.  
16 And it really shouldn't.

17 I mean, it's -- and now we have a stipulation in front  
18 of me, on the record, that I -- you know, that I was part of.  
19 That clearly should be in front of me. So, if this is just --  
20 if it's just limited to this, I don't have a problem with it  
21 but otherwise, I think I should just deny the motion.

22 MS. WALSH: Your Honor, the only -- the one comment I  
23 would make is, as you know, you instructed us and we were  
24 clear --

25 THE COURT: I didn't instruct you -- I gave -- yes, I

1 gave you instructions. I didn't tell you to file this,  
2 clearly.

3 MS. WALSH: No, no, Your Honor, of course not. That  
4 was our doing.

5 THE COURT: All right.

6 MS. WALSH: But we -- I read this transcript probably  
7 a hundred times, the May transcript, and I understood from this  
8 transcript that we were supposed to allege post-bar date facts  
9 but, some pre-bar date conduct could be relevant to whether  
10 there was a breach and that's what's said in the transcript.  
11 And I think that's what we've done. And so now we're in the  
12 position of right before the bar date, one business day before  
13 the bar date, they -- Delphi can get away with sending a  
14 letter, signed by counsel, under a court's instruction pursuant  
15 to Rule 26, and they say in the letter they're not intending to  
16 breach.

17 Yes, we had an anticipatory breach claim on file since  
18 Nov -- since January of '09 but as your Court -- as this Court  
19 recognized, an anticipatory breach is not the same as breach.  
20 So all those months, right -- one business day before the bar  
21 date they tell us they're not going to breach.

22 THE COURT: When did -- you certainly had the letter.  
23 Everyone had this letter --

24 MS. WALSH: The --

25 THE COURT: -- in May of 2010.

1 MS. WALSH: It was --

2 THE COURT: They'd had it for a year.

3 MS. WALSH: Yes, Your Honor. It was sent in the  
4 patent case --

5 THE COURT: I mean, I --

6 MS. WALSH: I'm not sure --

7 MR. BUTLER: It was sent before the bar date.

8 THE COURT: Look, I don't -- I don't spend thirty  
9 minutes of a hearing nailing down an agreement that will  
10 determine the rest of the course of the hearing on the  
11 assumption that people are going to say oh, but -- but for this  
12 one exception. Unless they do it at the time. They didn't do  
13 it. And it's in the order. And it's final. I'm sorry. I  
14 mean, it's -- what's the point of having a hearing, then?  
15 What's the point of having agreements on the record? I just  
16 don't -- that's just not how things happen. It's --

17 MR. JACOB: But Judge, everything that happened in the  
18 preference case happened after all these events.

19 THE COURT: No, no. Let's leave the preference case  
20 aside. We're not talking about that now. We're talking about  
21 this May 29th, 2009 letter.

22 MS. WALSH: I think Your Honor --

23 THE COURT: I mean, if -- if you started reading it a  
24 hundred times, I don't understand why there wasn't a Rule 60  
25 motion made, you know, on July 30th. Or August 30th of 2010.

1 It's just --

2 You know, at some point -- I'm not sure I would have  
3 granted it then, given -- given the -- what I view as the  
4 definitiveness of the discussion in May. But to be raising it  
5 now that oh, well, this is -- yes, it is pre-bar date but it's  
6 only a few days before the bar date. That's not what the  
7 agreement said. Pre-bar date, it's out.

8 And on the preference claim, I've already dealt with  
9 that, too. I mean, again, you have your right to make a Rule  
10 60 motion. But the key issue is whether the people who were in  
11 front of me in May and made this agreement, which was then  
12 memorialized in an agreed order in July of 2010, had the level  
13 of knowledge or could have had the level of knowledge because  
14 that's the standard under Rule 60. Just because you didn't  
15 think of it, doesn't mean it's out in Rule 60. It's not new  
16 evidence if you didn't think of it, because it was there.

17 But, you know, you could still make that motion.  
18 That's my view on the preference issue. I also think that --  
19 it's clear to me that if, in fact, I were to grant that motion,  
20 I'd keep the litigation because it involves several orders by  
21 me as well as the alleged bad faith conduct of the debtor in  
22 front of me. And the debtor, you know, has taken the position  
23 that it didn't act improperly in front of me. And maybe it's  
24 right on that so I -- you know --

25 So, my inclination, given the lapse of time here, is

1 to deny the underlying motion and just to keep the -- keep this  
2 in the context of a claim objection. I mean, the claim's  
3 asserted, it's a very different claim at this point and, you  
4 know, we can deal with that. Although, I'm happy to -- again,  
5 if it's clear that the only issue is the -- this interpretation  
6 of Michigan law on the -- how to construe the contract, then  
7 that -- that would go to Michigan.

8 So, I guess that's my ruling. I would deny the motion  
9 unless that's the case.

10 MR. BUTLER: I'm sorry. I heard -- Your Honor, could  
11 you repeat?

12 THE COURT: I would deny the motion for relief from  
13 the plan injunction unless, in fact, the complaint that's filed  
14 is the complaint that relies upon, solely, the basis for the  
15 cause of action, the assertion in paragraph 26.

16 MR. BUTLER: And Your Honor, would that mean that all  
17 other bases would be waived?

18 THE COURT: They're out.

19 MR. BUTLER: They're out.

20 THE COURT: Yeah. They're not going to be asserted.

21 Because I -- I mean, I just -- I still don't see anything  
22 that's -- other than that that's being asserted that's -- as a  
23 basis for the cause of action that isn't pre-bar date.

24 MS. WALSH: So, Your Honor, if we assert a  
25 counterclaim that's based, essentially, on paragraph 26, i.e.

1 that the specific --

2 THE COURT: They didn't have a right to terminate  
3 because it's a three year contract and --

4 MS. WALSH: Yes.

5 THE COURT: Yeah.

6 MS. WALSH: That could stay in Michigan?

7 THE COURT: Absolutely. So what I'm going to do is  
8 give you all ten days to file that -- that complaint. You  
9 don't have to. I mean, you don't have to file it. You have an  
10 alternative which is to, you know, move for relief under Rule  
11 60 but -- on the July order. But if it is filed, I'll enter an  
12 order lifting the plan injunction to let that -- that claim be  
13 dealt with in the Michigan litigation. If it's not filed, then  
14 I'll deny the motion.

15 MR. BUTLER: Your Honor, also, may I ask a question  
16 and -- will that order that you enter also dismiss the balance  
17 of their administrative claims in this case but for that  
18 limited matter? Because they filed -- remember, we have before  
19 Your Honor --

20 THE COURT: Well, they're only --

21 MR. BUTLER: -- an administrative claim.

22 THE COURT: You're only -- I mean, they'd only be  
23 asserting that claim.

24 MR. BUTLER: Well, but what I'm trying to get at, Your  
25 Honor, is they filed an administrative claim --



1 THE COURT: No, I understand. The whole point is to  
2 deal with this once. I don't want to deal with it piecemeal.

3 MR. BUTLER: Right. And so --

4 THE COURT: I mean, I'm assuming that's the case,  
5 yeah.

6 MS. WALSH: And so just so we're clear, Your Honor,  
7 ten days to file it in Michigan.

8 THE COURT: No, no, file it in front of me so I can  
9 see it.

10 MS. WALSH: Oh, okay.

11 THE COURT: and then I'll -- and submit it along with  
12 a proposed order lifting the injunction -- the plan injunction.  
13 And obviously, you should run it by the Skadden lawyers first  
14 before you send it in. I don't want to have this further  
15 delayed if it's -- you know, if it can be avoided. And when I  
16 say run "it" I mean both the proposed complaint as well as the  
17 order. But Mr. Butler's right. I don't want to have the  
18 Michigan Court deciding some issues and me deciding other  
19 issues. This should be it as far as -- the complaint that  
20 you'd be pursuing in Michigan would be the claim. Okay?

21 I'm not saying you have to do that. That's how I  
22 would -- otherwise I would just -- I would dismiss this -- I  
23 would deny this motion and I'd deal with the claim here. Okay?

24 MR. BUTLER: Thank you, Judge.

25 THE COURT: Okay. Be sure to e-mail everything to

1 chambers. I usually don't like e-mails on things that just  
2 come up in the ordinary course but this won't come up otherwise  
3 so be sure to e-mail everything to chambers --

4 MS. WALSH: Thank you, Your Honor.

5 THE COURT: -- when you file it so I'll be aware of  
6 it.

7 MS. WALSH: Thank you, Your Honor.

8 THE COURT: Thanks.

9 MR. BUTLER: Thanks, Judge.

10 (Whereupon these proceedings were concluded at 11:22 AM)

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I N D E X

RULINGS

	Page	Line
Motion for relief from plan injunction	55	7
conditionally denied; if complaint		
relies upon noted assertion, motion		
approved		

C E R T I F I C A T I O N

I, Zipporah Geralnik, certify that the foregoing transcript is  
a true and accurate record of the proceedings.

Zipporah  
Geralnik

Digitally signed by Zipporah  
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Date: August 29, 2011